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Attorney for Plaintiff
EDWIN WILLIAM STAGNER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EDWIN WILLIAM STAGNER,
Plaintiff,

v.

CARDWORKS SERVICING, LLC, a
Delaware limited liability company,

Defendant.

Case No. **C09 05767**

COMPLAINT

DEMAND FOR JURY TRIAL

15 United States Code § 1692 *et seq.*
California Civil Code § 1788 *et seq.*

Plaintiff, EDWIN WILLIAM STAGNER, based on information and belief and investigation of counsel, except for those allegations which pertain to the named Plaintiff or his attorneys (which are alleged on personal knowledge), hereby makes the following allegations:

I. INTRODUCTION

1. This is an action for statutory damages, attorney fees and costs brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* (hereinafter "RFDCPA") which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and

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E-Filing

Filed

DEC - 9 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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1 supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367. Declaratory
2 relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

3 3. This action arises out of Defendant's violations of the Fair Debt Collection
4 Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

5 **III. VENUE**

6
7 4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in that a
8 substantial part of the events or omissions giving rise to the claim occurred in this judicial district.
9 Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that Defendant
10 transacts business in this judicial district and the violations of the FDCPA complained of occurred in
11 this judicial district.
12

13 **IV. INTRADISTRICT ASSIGNMENT**

14 5. This lawsuit should be assigned to the San Jose Division of this Court because a
15 substantial part of the events or omissions which gave rise to this lawsuit occurred in Santa Clara
16 County.
17

18 **V. PARTIES**

19 6. Plaintiff, EDWIN WILLIAM STAGNER (hereinafter "Plaintiff"), is a natural
20 person residing in Santa Clara County, California. Plaintiff is a "consumer" within the meaning of 15
21 U.S.C. § 1692a(3) and a "debtor" within the meaning of Cal. Civil Code § 1788.2(h) and a "senior
22 citizen" within the meaning of Cal. Civil Code § 1761(f).
23

24 7. Defendant, CARDWORKS SERVICING, LLC (hereinafter "CARDWORKS"), is a
25 Delaware limited liability company engaged in the business of collecting debts in this state with its
26 principal place of business located at: 101 Crossways Park West, Woodbury, New York 11797.
27 CARDWORKS may be served at the address of its Agent for Service at: Cardworks Servicing, LLC,
28

1 c/o Corporation Service Company, Agent for Service, 2711 Centerville Road, Suite 400, Wilmington,
2 Delaware 19808. The principal purpose of CARDWORKS is the collection of debts using the mails
3 and telephone, and CARDWORKS regularly attempts to collect debts alleged to be due another.
4 CARDWORKS is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code §
5 1788.2(c).
6

7 VI. FACTUAL ALLEGATIONS

8 8. On a date or dates unknown to Plaintiff, Plaintiff is alleged to have incurred a
9 financial obligation, namely a consumer credit account issued by Merrick Bank, and bearing the
10 account number XXXX-XXXX-XXXX-3906 (hereinafter "the alleged debt"). The alleged debt was
11 incurred primarily for personal, family or household purposes and is therefore a "debt" as that term is
12 defined by 15 U.S.C. § 1692a(5) and a "consumer debt" as that term is defined by Cal. Civil Code §
13 1788.2(f).
14

15 9. Plaintiff is informed and believes, and thereon alleges, that sometime thereafter on
16 a date unknown to Plaintiff, the alleged debt was consigned, placed or otherwise transferred to
17 Defendant for collection from Plaintiff.
18

19 10. Thereafter, Defendant sent a collection letter (Exhibit "1") to Plaintiff which is a
20 "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).
21

22 11. The collection letter (Exhibit "1") is dated December 28, 2008.

23 12. The collection letter (Exhibit "1") was the first written communication from
24 Defendant to Plaintiff in connection with the collection of the debt.

25 13. A true and accurate copy of the collection letter from Defendant to Plaintiff is
26 attached hereto, marked Exhibit "1," and by this reference is incorporated herein.
27

28 ///

14. The collection letter (Exhibit "1") states in relevant part:

Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: (i) Obtain verification of the debt or obtain a copy of a judgement [sic] and mail you a copy of such verification or judgement [sic]. (ii) Provide you with the name and address of the original creditor, if different from the current creditor.

15. As a senior citizen subjected to Defendant's abusive, deceptive and unfair collection practices, Plaintiff is entitled to treble damages pursuant to Cal. Civil Code § 3345.

16. Plaintiff is informed and believes, and thereon alleges, that Defendant has sent standard form collection letters in the form of Exhibit "1" to more than 40 persons in California in the one year preceding the filing of this Complaint. Therefore, Plaintiff may seek leave to amend this Complaint to add class allegations at a later date.

VII. CLAIMS

FAIR DEBT COLLECTION PRACTICES ACT

17. Plaintiff brings the first claim for relief against Defendant under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*

18. Plaintiff repeats, realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

19. Plaintiff is a "consumer" as that term is defined by the FDCPA, 15 U.S.C. § 1692a(3).

20. Defendant, CARDWORKS, is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692a(6).

21. The financial obligation alleged to be originally owed to Merrick Bank by Plaintiff is a "debt" as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).

1 22. CARDWORKS has violated the FDCPA. The violations include, but are not
2 limited to, the following:

3 a. CARDWORKS misrepresented Plaintiffs' right to dispute the debt, in
4 violation of 15 U.S.C. §§ 1692e and 1692e(10); and

5 b. CARDWORKS required that disputes be in writing to prevent
6 CARDWORKS from considering the debt valid, in violation of 15 U.S.C. § 1692g(a)(3).
7

8 23. CARDWORKS' acts as described above were done intentionally with the purpose
9 of coercing Plaintiff to pay the debt.

10 24. As a result of CARDWORKS' violations of the FDCPA, Plaintiff is entitled to an
11 award of statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.
12

13 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

14 25. Plaintiff brings the second claim for relief against Defendant under the Rosenthal
15 Fair Debt Collection Practices Act ("RFDCPA"), California Civil Code §§ 1788-1788.33.

16 26. Plaintiff repeats, realleges and incorporates by reference all preceding paragraphs
17 as though fully set forth herein.

18 27. Plaintiff is a "debtor" as that term is defined by the RFDCPA, Cal. Civil Code §
19 1788.2(h).
20

21 28. Defendant, CARDWORKS, is a "debt collector" as that term is defined by the
22 RFDCPA, Cal. Civil Code § 1788.2(c).
23

24 29. The financial obligation alleged to be originally owed to Merrick Bank by Plaintiff
25 is a "consumer debt" as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f).

26 30. Defendant has violated the RFDCPA. The violations include, but are not limited
27 to, the following:
28

1 a. CARDWORKS misrepresented Plaintiffs' right to dispute the debt, in
2 violation of Cal. Civil Code § 1788.17;¹ and

3 b. CARDWORKS required that disputes be in writing to prevent
4 CARDWORKS from considering the debt valid, in violation of Cal. Civil Code § 1788.17.²

5 31. CARDWORKS' acts as described above were done willfully and knowingly with
6 the purpose of coercing Plaintiff to pay the debt, within the meaning of Cal. Civil Code § 1788.30(b).
7

8 32. As a result of CARDWORKS' willful and knowing violations of the RFDCPA,
9 Plaintiff is entitled to an award of a statutory penalty in an amount not less than one hundred dollars
10 (\$100) nor greater than one thousand dollars (\$1,000), pursuant to Cal. Civil Code § 1788.30(b).
11

12 33. As a result of CARDWORKS' violations of the RFDCPA, Plaintiff is entitled to
13 an award of statutory damages in an amount not exceeding \$1,000, pursuant to Cal. Civil Code §
14 1788.17.³

15 34. As a result of CARDWORKS' violations of the RFDCPA, Plaintiff is entitled to
16 an award of his reasonable attorney's fees and costs pursuant to Cal. Civil Code §§ 1788.30(c) and
17 1788.17.⁴
18

19 35. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the RFDCPA
20 are intended to be cumulative and in addition to any other procedures, rights or remedies that the
21 Plaintiff may have under any other provision of law.

22 **VIII. REQUEST FOR RELIEF**

23 Plaintiff requests that this Court:
24

25 a) Assume jurisdiction in this proceeding;

26 b) Declare that CARDWORKS violated the Fair Debt Collection Practices Act, 15 U.S.C.

27 ¹ 15 U.S.C. §§ 1692e and 1692e(10).


28 ² 15 U.S.C. § 1692g(a)(3).

³ 15 U.S.C. § 1692k(a)(2)(A).

⁴ 15 U.S.C. § 1692k(a)(3).

- 1 §§ 1692e, 1692e(10), and 1692g(a)(3);
- 2 c) Declare that CARDWORKS violated the Rosenthal Fair Debt Collection Practices Act,
- 3 Cal. Civil Code § 1788.17;
- 4 d) Award Plaintiff statutory damages in an amount not exceeding \$1,000, pursuant to 15
- 5 U.S.C. § 1692k(a)(2)(A);
- 6 e) Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than
- 7 \$1,000, pursuant to Cal. Civil Code § 1788.30(b);
- 8 f) Award Plaintiff statutory damages in an amount not exceeding \$1,000, pursuant to Cal.
- 9 Civil Code § 1788.17;⁵
- 10 g) Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15
- 11 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17⁶ and 1788.30(c); and
- 12 h) Award Plaintiff such other and further relief as may be just and proper.
- 13
- 14
- 15

16 CONSUMER LAW CENTER, INC.

17 By: /s/ Fred W. Schwinn 

18 Fred W. Schwinn (SBN 225575)

19 CONSUMER LAW CENTER, INC.

20 12 South First Street, Suite 1014

21 San Jose, California 95113-2418

22 Telephone Number: (408) 294-6100

23 Facsimile Number: (408) 294-6190

24 Email Address: fred.schwinn@sjconsumerlaw.com

25 Attorney for Plaintiff

26 EDWIN WILLIAM STAGNER

27

28 ⁵ 15 U.S.C. § 1692k(a)(2)(A).

⁶ 15 U.S.C. § 1692k(a)(3).

CERTIFICATION PURSUANT TO CIVIL L.R. 3-16

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, EDWIN WILLIAM STAGNER, hereby demands a trial by jury of all triable issues of fact in the above-captioned case.

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.

CARDWORKS SERVICING, LLC
P.O. BOX 9201
OLD BETHPAGE, NY 11804

December 28, 2008

EDWIN W STAGNER
140 CHATEAU LA SALLE DR
SAN JOSE CA 95111-3005



Account number: 4120613074153906
Re: Edwin W Stagner
Balance Due: \$2,206.97
Creditor: Merrick Bank

Dear Edwin W Stagner:

Please be advised that your above referenced account, is being handled by this office and is in default.

By contacting us within five (5) days of the date of this letter, payment arrangements on your account can be made. Please contact our office today, toll free, at 1-877-487-5583 to avoid additional collection efforts. The hours of operation are Monday-Wednesday and Friday 8:00 am to 9:00 pm EST, Thursday 12:30 pm to 9:00 pm EST, and Saturday 8:00 am to 4:30 pm EST.

If you have any questions, please contact us at 1-877-487-5583.

Sincerely,
CardWorks Servicing

IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector. Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: (i) Obtain verification of the debt or obtain a copy of a judgement and mail you a copy of such verification or judgement. (ii) Provide you with the name and address of the original creditor, if different from the current creditor.

Please detach and return with your payment

Current Balance: \$2,206.97

Account Number: 4120613074153906

Payment Enclosed: \$ _____

Name: Edwin W Stagner
Address: 140 Chateau La Salle Dr
San Jose Ca 95111-3005

_____ Please check here if this is a new address. Indicate changes above.

You can pay your account in the following ways:

Via Check:

- Make checks payable to Cardworks Servicing
- Mail payment to: P.O. Box 5721, Hicksville, NY 11802-5721

Pay-by-Phone:

- Call 1-877-487-5583 to set up a FREE payment by phone



IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW

FEDERAL VALIDATION NOTICE:

PURSUANT TO 15 U.S.C./1692G (a), TAKE NOTICE THAT:

1. THE AMOUNT OF THE CLAIMED DEBT IS THE AMOUNT STATED IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.
2. THE NAME OF THE CREDITOR TO WHOM THE DEBT IS OWED IS IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.
3. UNLESS YOU DISPUTE THE VALIDITY OF THE ABOVE DEBT, OR ANY PORTION THEREOF, WITHIN THIRTY (30) DAYS AFTER YOUR RECEIPT OF THIS NOTICE, THE DEBT WILL BE ASSUMED TO BE VALID BY US.
4. IF YOU NOTIFY OUR OFFICE BELOW IN WRITING WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE THAT THE DEBT, OR ANY PORTION THEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF ANY JUDGEMENT TO YOU.
5. UPON YOUR WRITTEN REQUEST TO THE OFFICE BELOW WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE, WE WILL PROVIDE YOU WITH THE NAME AND THE ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR LISTED IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.

TENNESSEE RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE COLLECTION SERVICE BOARD OF THE DEPARTMENT OF COMMERCE AND INSURANCE.

COLORADO RESIDENTS:

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAN.CFM. A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATION WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

NEW YORK STATE RESIDENTS:

NEW YORK CITY DEPARTMENT OF CONSUMERS AFFAIRS LICENSE NUMBER: 1184611

WISCONSIN RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE OFFICE OF THE ADMINISTRATOR OF THE DIVISION OF BANKING, P.O. BOX 7876, MADISON, WISCONSIN 53707.

NORTH CAROLINA RESIDENTS:

NORTH CAROLINA DEPARTMENT OF INSURANCE PERMIT NUMBER: 4390

MINNESOTA RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE MINNESOTA DEPARTMENT OF COMMERCE.

CALIFORNIA RESIDENTS:

1. THE STATE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT AND THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT REQUIRE THAT, EXCEPT UNDER UNUSUAL CIRCUMSTANCES, COLLECTORS MAY NOT CONTACT YOU BEFORE 8 AM OR AFTER 9 PM. THEY MAY NOT HARASS YOU BY USING THREATS OF VIOLENCE OR ARREST OR BY USING OBSCENE LANGUAGE. COLLECTORS MAY NOT USE FALSE OR MISLEADING STATEMENTS OR CALL YOU AT WORK IF THEY KNOW OR HAVE REASON TO KNOW THAT YOU MAY NOT RECEIVE PERSONAL CALLS AT WORK. FOR THE MOST PART, COLLECTORS MAY NOT TELL ANOTHER PERSON TO CONFIRM YOUR LOCATION OR ENFORCE A JUDGEMENT. FOR MORE INFORMATION ABOUT DEBT COLLECTION ACTIVITIES, YOU MAY CONTACT THE FEDERAL TRADE COMMISSION AT 1-877-FTC-HELP OR WWW.FTC.GOV.
2. AS REQUIRED BY LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CURRENT OBLIGATIONS.

UTAH RESIDENTS:

AS REQUIRED BY UTAH LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS.

MASSACHUSETTS RESIDENTS:

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN (10) DAYS UNLESS YOU PROVIDE WRITTEN COMMUNICATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN (7) DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR AT P.O. BOX 9201, OLD BETHPAGE, NY 11804-9001. IF YOU WISH TO DISCUSS THIS MATTER, PLEASE CALL US DIRECT AT 1-877-487-5583 DURING THE HOURS REFERENCED BELOW.

Hours of Operation:

Monday-Wednesday and Friday: 8:00 am to 9:00 pm EST

Thursday: 12:30 pm to 9:00 pm EST

Saturday: 8:00 am to 4:30 pm EST

Phone number: 1-877-487-5583